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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

MARTIN SCHNEIDER, SARAH
DEIGERT, LAURIE REESE, THERESA
GAMAGE, TIFFANIE ZANGWILL, and
NADIA PARIKKA, Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

CHIPOTLE MEXICAN GRILL, INC., a
Delaware Corporation,

Defendant.

Case No. 4:16-cv-02200-HSG (KAW)

CLASS ACTION

**MOTION PURSUANT TO CIVIL
LOCAL RULES 6-3 AND 16-2 TO
EXTEND DEADLINES AND HEARING
DATE**

Judge: Hon. Haywood S. Gilliam, Jr.
Ct. 2, 4th Floor
Date: n/a
Time: n/a

Pursuant to Civil Local Rules 6-3, 16-2, and this Court's Standing Order for Civil Cases, Plaintiffs Martin Schneider, Sarah Deigert, Theresa Gamage, and Nadia Parikka ("Plaintiffs") respectfully request that the Court move the hearing date on Plaintiffs' motion for class certification and Defendant Chipotle Mexican Grill, Inc.'s ("Defendant") motion for summary judgment, currently scheduled for February 8, 2018. Plaintiffs also seek to reset and set a schedule concerning various motions to exclude, including the two motions Defendant has filed [ECF Nos. 100, 101]. Though Plaintiffs' counsel sought Defendant's concurrence to stipulate to a request, Defendant has refused to stipulate to the change. *See* Declaration of Laurence D. King in Support of Plaintiffs' Motion Pursuant to Civil Local Rules 6-3 and 16-2 to Extend Deadlines and Hearing Date, dated December 29, 2017 ("King Declaration"), ¶¶ 6-7.

I. PROCEDURAL HISTORY, SCHEDULING, AND PRIOR EXTENSIONS

The Court entered a Revised Joint Proposed Partial Pretrial Schedule and Order on December 15, 2016 [ECF No. 48]. On July 21, 2017, Plaintiffs filed a motion to extend discovery deadlines to complete discovery, which the Court granted the same day [ECF Nos. 68, 69].

Due to certain outstanding discovery issues, on September 28, 2017, the parties sought leave to extend the class certification and summary judgment briefing and hearing schedule [ECF No. 83]. The Court, in its order dated October 2, 2017, granted the request (the "October 2 Order") [ECF No. 84], ordering opening briefs on the motions for class certification and for summary judgment to be filed no later than November 17, 2017, oppositions to be filed no later than December 22, 2017, and replies to be filed no later than January 19, 2018. *Id.* The Court is currently scheduled to hear the motions on class certification and summary judgment on February 8, 2018.¹ *Id.*

¹ Plaintiffs' unopposed motion for reconsideration [ECF No. 87] is also scheduled to be heard on February 8, 2018, which was the next available law and motion hearing date open *at the time* Plaintiffs filed their motion. Defendant had requested a modification to the schedule due to Plaintiffs' motion [ECF No. 88], and, during the November 15, 2017 telephone conference with the Court, indicated that it intended to oppose the motion. Finding no prejudice or harm, however, the Court denied Defendant's motion [ECF No. 90]. And, Defendant did not file an opposition to Plaintiffs' motion or a statement of non-opposition, as required under Civil Local Rule 7-3(b).

1 The parties filed their opening briefs on the motions for class certification and summary
2 judgment on November 17, 2017 [ECF Nos. 92, 95], and also filed their oppositions on December
3 22, 2017 [ECF Nos. 102, 104]. Pursuant to the October 2 Order, the parties are on track to file
4 their replies in further support of their respective motions on January 19, 2018. Plaintiffs do not
5 seek to move the date for replies to the motions for class certification and summary judgment.
6 King Decl. ¶ 12.

7 Plaintiffs, in connection with their motion for class certification, filed reports of their two
8 experts [ECF Nos. 95-42, 43]. With its opposition to the motion for class certification, Defendant
9 not only introduced the reports from its own experts [ECF Nos. 102-27, 28], but also filed motions
10 to exclude Plaintiffs' experts [ECF Nos. 100, 101]. Even though Defendant could have informed
11 the Court and Plaintiffs about its intention to file the motions to exclude during the November 15
12 call with the Court as part of its request to modify deadlines, it chose not to. And although the
13 Court's Scheduling Notes indicate that the next available law and motion date is not until March
14 22, 2018, Defendant set their motions to also be heard on February 8, 2018. King Decl., ¶ 4. As
15 currently scheduled, oppositions to Defendants' motions to exclude are due January 5, 2018, and
16 replies due January 12, 2018 [ECF Nos. 100, 101], placing Plaintiffs in the difficult position of
17 having to draft two lengthy opposition briefs over the holidays.

18 Given the holidays and Plaintiffs' intention to file motions to exclude Defendant's experts
19 with their class certification reply, Plaintiffs' counsel left a voicemail and a follow-up email
20 seeking Defendant's agreement to request moving the motions hearing date and to set a briefing
21 schedule on the various motions to exclude. King Decl. ¶ 6. Plaintiffs believe that, given the
22 interrelated nature of the motions, and in order to conserve judicial and party resources, the Court
23 should hear all the motions at one time. *Id.* However, instead of returning counsel's call to confer
24 on the request, Defendant refused in an email, stating that Plaintiffs could have filed their motions
25 to exclude in connection with their motion for class certification and/or opposition to summary
26 judgment – even though Defendant had not placed into evidence its own experts' reports until
27 December 22 with its opposition to class certification. *Id.* ¶ 7.

II. GOOD CAUSE EXISTS TO MOVE THE HEARING DATE AND TO SET A BRIEFING SCHEDULE ON THE MOTIONS TO EXCLUDE; PLAINTIFFS WOULD BE SUBSTANTIALLY HARMED IF THE SCHEDULE IS NOT MOVED

Rule 16 of the Federal Rules of Civil Procedure provides that deadlines established in a case management order may “be modified only for good cause.” “Good cause” exists when a deadline “cannot reasonably be met despite the diligence of the party seeking the extension.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (citation omitted). Civil Local Rule 6-3(a)(3) requires demonstration of substantial harm or prejudice that would occur if the Court did not change time.

Here, good cause exists to move the current hearing date on the motions for class certification and summary judgment. Because Defendant has introduced its own experts in opposition to Plaintiffs’ motion for class certification, Plaintiffs intend to move to exclude them. However, per the Court’s Scheduling Notes, the next available law and motion date is not until March 22, 2018. While Plaintiffs could, in potentially violating the Court’s Scheduling Notes, seek to set the hearing date for their motions to exclude also for February 8,² because Civil Local Rule 7-2 requires notice of a motion be made not less than 35 days prior to the hearing, Plaintiffs would have to essentially file their opening papers no later than January 4, 2018. Given the year-end holidays and that oppositions to Defendant’s motions to exclude are currently set to be due January 5, Plaintiffs will not be able to, even with extreme diligence, file their motions to exclude by January 4.

In addition, without moving the hearing date and setting a reasonable briefing schedule due to the holidays, Plaintiffs would be substantially harmed. Defendant has sought to exclude Plaintiffs’ experts whose testimony and opinions are important to Plaintiffs’ motion for class certification and in opposition to Defendant’s motion for class certification. But, contrary to the Court’s Scheduling Notes, Defendant set the hearing date of its motions for the same day as the hearing on the motions for class certification and summary judgment, placing the Court and

² This appears to be precisely what Defendant has done with respect to their motions to exclude.

Plaintiffs in the position of having to review and prepare for additional motion practice outside what has already been scheduled. Importantly, Defendant has refused – over email and without any effort at conferring – to accommodate Plaintiffs with a more reasonable schedule that would take into consideration the holidays, and instead filed their motions the day before two holiday weekends and giving Plaintiffs until January 5, 2018 to oppose some 40 pages of motion practice.

Finally, because the various motions to exclude will bear directly on class certification and summary judgment, good cause exists such that the Court should hear all the motions together. Hearing the interrelated motions at one time would save the parties and the Court valuable resources. While the requested time modification would move the hearing to the next available law and motion date (March 22), there would be no other effect on the case schedule because the Court has not entered any pretrial or trial schedule.

III. REQUESTED HEARING DATE AND BRIEFING SCHEDULE

Plaintiffs only seek to move the hearing date on the motions for class certification and for summary judgment, and to set a more reasonable briefing schedule for the motions to exclude. Plaintiffs seek the following:

ACTION/EVENT	Current Date	Requested Date
Plaintiffs to file oppositions to Defendant's motions to exclude	January 5, 2018	January 19, 2018
Parties to file reply to motions for class certification class and/or summary judgment	January 19, 2018	January 19, 2018 (no change)
Plaintiffs to file any motions to exclude	n/a	January 19, 2018
Defendant to file replies in further support of Defendant's motions to exclude	January 12, 2018	February 2, 2018
Defendant to file oppositions to Plaintiffs' motions to exclude	n/a	February 16, 2018
Plaintiffs to file replies in further support of Plaintiffs' motions to exclude	n/a	March 2, 2018
Hearing on motion for class certification and summary judgement	February 8, 2018 2:00 p.m.	March 22, 2018 2:00 p.m. (or next available hearing date)

1 **IV. CONCLUSION**

2 While Plaintiffs would rather the motions for class certification and summary judgment be
 3 heard on February 8, good cause exists to move the hearing date. Moreover, Plaintiffs would be
 4 substantially harmed should the current deadlines remain. Plaintiffs seek a limited change, but
 5 Defendant has refused. For these reasons, Plaintiffs respectfully request that the Court grant their
 6 motion to move the hearing date on the motions for class certification and summary judgment, and
 7 to set a briefing schedule for the motions to exclude.

8 Respectfully submitted,

9 DATED: December 29, 2017

By: /s/ Laurence D. King

10 Laurence D. King

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